IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3913 of 2004

Date of Decision: 07.09.2006

Kali Charan ...Petitioner

Vs.

State of Haryana & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Vikas Kumar, Advocate,
for the petitioner.

Mr.Jitender Chauhan, Addl.A.G., Haryana,
for respondents No.1 and 2.

Vinod K.Sharma, J. (Oral)

Present revision petition has been filed against the order dated 26.3.2002 passed by the learned Addl. District Judge, Faridabad vide which the appeal filed by the Haryana Tourism Corporation Limited has been accepted.

The petitioner was appointed as casual labour by the State of

Haryana for renovation of Nahar Singh Palace, Ballabgarh, District Faridabad who was subsequently transferred to Haryana Tourism Corporation Limited along with the employees working in the said Palace. The petitioner had been performing his duties when all of a sudden he was relieved from his duties with a direction to report to the Haryana Government. However, the Haryana Government did not accept him on the plea that his services stood transferred to Haryana Tourism Corporation Limited along with the transfer of Nahar Singh Palace. As the petitioner was not being accepted either by the State of Haryana or by Haryana Tourism Corporation Limited, the petitioner filed the suit for declaration with consequential relief of mandatory injunction seeking regularisation of his services. The claim of the petitioner was that as he continued to be in service and therefore, he could not have been relieved unless he was accepted by either department.

In the written statement, a specific stand was taken by the Haryana Tourism Corporation Limited that they had no right to terminate the services of the petitioner nor they could regularise his services. The State of Haryana in the written statement took a plea that the services of the petitioner stood transferred to Haryana Tourism Corporation Limited and therefore, they are the employer for all intents and purposes. It cannot be disputed that Haryana Tourism Corporation

Limited is a company owned by the State of Haryana and and is State within the meaning of Article 12 of the Constitution of India. In view of this, none of the respondents had any authority to act in arbitrary manner as has been done in the present case. The learned Trial Court in view of these facts was pleased to allow the application moved under Order 39 Rules 1 and 2 of the Code of Civil Procedure and ordered the defendants to restrain from terminating the services of the plaintiff except in due course of law. Further directions were given to defendants No.3 and 4 to allow the plaintiff to join his duties as Chowkidar at Nahar Singh Palace, Ballabgarh, District Faridabad till the decision of the suit. The respondents instead of complying with the orders passed by the learned Trial Court and taking action in accordance with law filed an appeal before the learned Additional District Judge, Faridabad who by the impugned order accepted the appeal and set aside the order passed under Order 39 Rules 1 and 2 of the Code on the ground that mere relieving of the petitioner amounted to termination of his services and consequently held that there was no prima facie case or balance of convenience in favour of the petitioner. The order passed by the learned Additional District Judge cannot be sustained as the order relieving the petitioner was with a specific direction that he should report for duty to the State of Haryana treating him to be an employee of the State of Haryana and

was not a simple order of relieving from the post by paying him necessary consequential benefits. Therefore,the order passed by the learned Additional District Judge, Faridabad suffers from an error apparent and is the outcome of misreading of the document placed on record and as well as the pleadings of the parties where specific stand was taken that the services of the petitioner had not been terminated by either of the respondent-defendants.

Accordingly the revision petition is allowed. The order passed by the learned Additional District Judge, Faridabad is set aside and that of the learned Trial Court is restored.

(Vinod K.Sharma)
Judge

7.09.2006
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